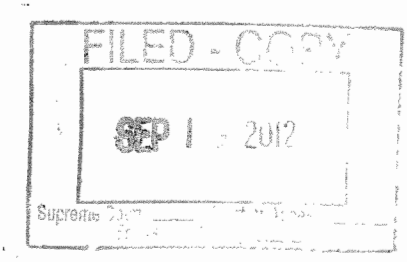
9-19-2012

State v. Smith Appellant's Brief Dckt. 39704

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO, Plaintiff-Respondent, vs. DANA LYDELL SMITH, Defendant-Appellant.	)	S.Ct. No. 39704



OPENING BRIEF OF APPELLANT

Appeal from the District Court of the Fifth
Judicial District of the State of Idaho
In and For the County of Minidoka

HONORABLE MICHAEL CRABTREE
District Judge

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TABLE OF CONTENTS

I. TABLE OF AUTHORITIES

FEDERAL CASES

STATE CASES

STATE STATUTES

II. STATEMENT OF THE CASE

A. Nature of the Case

This is an appeal from the denial of a motion for a new trial. R 26-29.

B. Procedural History and Statement of Facts

Appellant Dana Smith was convicted of grand theft and his conviction and sentence were affirmed by the Court of Appeals in an unpublished opinion on May 20, 2009. R 3. As noted in his memorandum in support of his motion for a new trial, Mr. Smith filed a petition for post-conviction relief prior to the completion of the direct appeal. *Id.* Relief was denied and an appeal taken. *Smith v. State*, CV-2008-0892. However, appellate relief was denied by the Court of Appeals in an unpublished opinion on November 14, 2011.

On January 19, 2012, Mr. Smith filed a motion for new trial on the basis of newly discovered evidence. R 1. In support of his motion, Mr. Smith provided a long statement of his history of serious and severe mental illness and incapacity. R 2-17. Noting that Mr. Smith had filed at least five prior motions for a new trial, the court denied the January 19 motion on the basis that it was untimely and the court lacked jurisdiction to hear it. R 23-24.

This appeal timely follows. R 26-29.

III. ISSUE PRESENTED FOR REVIEW

Did the district court err in concluding that the motion for a new trial was untimely and that it did not have jurisdiction to proceed?

IV. ARGUMENT

A. The District Court Erred in Concluding that it was Without Jurisdiction to Consider Mr. Smith's Motion

Mr. Smith acknowledges that his motion for a new trial was filed more than 2 years after his conviction became final and that I.C. § 19-2407 and ICR 34, for the most part, require that a new trial motion based upon newly discovered evidence be filed within two years of the final judgment. He also acknowledges that *State v. Parrott,* 138 Idaho 40, 42, 57 P.3d 509, 511 (Ct. App. 2002), holds that the time for filing a motion for a new trial based upon newly discovered evidence may not be extended unless an application for extension of time to file the motion is made within the statutory time limit.

In *Parrott,* the Court of Appeals wrote:

> The time for filing a motion for a new trial based upon newly discovered evidence may not be extended unless an application for extension of time to file the motion is made within the statutory time limit. If such application is not made within the statutory time limit, the district court has no jurisdiction to consider a motion for new trial filed outside the specified time limit.

Id., citing State v. Davis, 8 Idaho 115, 66 P. 932 (1901).

However, I.C. § 19-2407 states that the application must be made within the time provided by the Idaho criminal rules unless the court or judge extends the time and does not include a limitation that any request for extension be filed before the original time provided has expired. The statute simply states:

> **Time for application.** – The application for a new trial may be made before or after the judgment; and must be made within the time provided by the Idaho criminal rules unless the court or judge extends the time.

I.C. § 19-2704.

> Where the language of a statue is plain and unambiguous, this Court must give effect to the statute as written, without engaging in statutory construction. *State v. McCoy,* 128 Idaho 362, 365, 913 P.2d 578, 581 (1996). Unless the result is palpably absurd, this Court assumes that the legislature meant what is clearly stated in the statute. *Miller v. State,* 110 Idaho 298, 299, 715 P.2d 968, 969 (1986). Where ambiguity exists as to the elements or potential sanctions of a crime, this Court will strictly construe the criminal statute in favor of the defendant. *State v. Thompson,* 101 Idaho 430, 437, 614 P.2d 970, 977 (1980).

State v. Rhode, 133 Idaho 459, 988 P.2d 685 (1999).

In *Parrott,* the Court of Appeals read an additional requirement into the plain, unambiguous language of the statute, requiring that any motion to extend the time for filing a new trial motion based upon newly discovered evidence be filed within the original two years allowed for a filing of a new trial motion.

For authority for the inclusion of this new requirement, the Court cited *Davis.* But, *Davis* did not address the question of whether a motion to extend the time to file a motion for a new trial could be made outside the time limit of the then existing Penal Code provision. Rather, *Davis* held that a new trial motion made four years after the judgment of conviction was entered could not be heard as the court had not extended the time for the motion.

But, even if *Davis* had created the new requirement that *Parrott* did, the requirement would now be anachronistic and should be eliminated.

In 1901, the year *Davis* was decided, another case *State v. Rice,* 7 Idaho 762, 66 P. 87 (1901), was also decided. In that case, a murder was committed on October 1, 1900. Mr. Rice was arrested that day. He was indicted and arraigned on October 12, 1900. Three days later, he pled not guilty. On October 16, 1900, he asked for a continuance of the trial. It was denied; he was tried; and on November 1, 1900, he was convicted and sentenced to die. On appeal, he

argued several points, including that he should have been granted a continuance to prepare for trial.

In its decision affirming the conviction and sentence, the Idaho Supreme Court wrote, "It will thus be seen that he had about two weeks in which to prepare for trial, and we do not think the trial court erred in refusing to grant the postponement asked for upon the ground that the defendant had not sufficient time to prepare for trial." 7 Idaho at 764, 66 P. at 88. What was perfectly reasonable in 1900, that a man should defend for his life just two weeks after a crime occurred and just four days after he was charged and arraigned, is unthinkable today.

In *Davis*, similarly anachronistic grounds were relied upon to determine that Mr. Davis's motion for a new trial was untimely. In holding the motion untimely, the Supreme Court noted that all "controversies must at some time come to an end." 8 Idaho at 115, 66 P. at 932. The Court noted worries that "men convicted of the most heinous crimes, and who were justly sentenced to long terms of imprisonment" could trump up or manufacture evidence years after the fact and get a new trial wherein the state could no longer prove its case because its witnesses had died or moved. "The conditions brought about by such a rule would be deplored by every citizen who respects the public peace, and desires the preservation of law and good order." 8 Idaho at 116, 66 P. at 933.

Mr. Davis's counsel, described as "able and eloquent," argued that under the Court's limitation on the time for filing a new trial motion, a man might be convicted of the murder of another and sentenced to life and that a year later the "murdered" man could turn up alive and well and there could be no new trial. The Supreme Court rejected this argument, both because no conviction could be obtained without proof of the corpus deliciti, "which could hardly occur in

any civilized country," and because "the picture [counsel] presents is so overdrawn that there is no danger of its occurring one time in a thousand years." *Id.*

But, in the 111 years intervening between *Davis* and today, the faith in the accuracy of the criminal justice system at the heart of the Court's rejection of concerns about avenues for relief for the wrongfully convicted has fractured. According to the Center on Wrongful Convictions at Northwestern Law School, there have been at least 953 state cases and 15 federal cases in the United States in which a defendant has been convicted of a crime and later restored to the status of legal innocence based on evidence not presented at the defendant's trial.[1] As a group, these exonerated men and women spent more than 10,000 years in prison with an average of more than 11 years each. Since 2000, exonerations have averaged 52 a year -- in other words, once a week. And, the Center lists 18 cases wherein it is extremely likely that innocent men were executed. www.law.northwestern.edu/wrongfulconvictions. See also, The National Registry of Exonerations, a joint project of Michigan Law and Northwestern Law at www.law.umich.edu/special/exoneration.

The rule set out in *Parrott* in reliance on *Davis*, that a motion to extend the time for a motion for a new trial must be made within the original time for the motion for a new trial, is rooted in an understanding of the criminal justice system that is no longer valid. Rather than

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[1] As tracking these cases is difficult, the number of exonerations is undoubtedly higher. For example, Northwestern cites only one case of exoneration in Idaho - that of Charles Fain - www.law.northwestern.edu/wrongfulconvictions/. However, there have been at least two other exonerations in Idaho. *See Paradis v. Arave,* 240 F.3d 1169 (9th Cir. 2001). While federal habeas relief was granted to Mr. Paradis because of a *Brady v. Maryland,* 373 U.S. 83, 83 S.Ct. 1194 (1963), violation, the Ninth Circuit also found that Mr. Pardis had made a sufficient showing of actual innocence under *Schlup v. Delo,* 513 U.S. 298, 115 S.Ct. 851 (1995). Likewise, Rauland Grube was wrongfully convicted of murder and ultimately granted federal habeas relief because of a *Brady* violation. *Grube v. Blades,* 2006 WL 297203.

once in a thousand years, innocent people are convicted all the time even in our civilized society where our citizens still respect public peace and preservation of law and good order.

Not only is the rule based on an outdated belief in the infallibility of the criminal justice system, it exists in violation of the rule that where the language of a statute is clear, it is to be given effect without resort to statutory construction and when statutory construction is required, the statute is to be strictly construed in favor of the defendant. *Rhode, supra.*

Moreover, the rule created and applied in *Parrott* is inconsistent with the rules applied in post-conviction. In post-conviction, the case law allows an equitable tolling of time limits for the filing of petitions under I.C. § 19-4902(a), even though, unlike I.C. § 49-2407, I.C. § 19-4902(a) has no language allowing extensions and § 19-4902(b) allows for greater time limits only for DNA petitions. *See, Martinez v. State,* 130 Idaho 530, 536, 944 P.2d 127, 133 (Ct. App. 1997); *Abbott v. State,* 129 Idaho 381, 385, 924 P.2d 1225, 1229 (Ct. App. 1996). And, the case law has allowed, in some circumstances, that the commencement of the limitations period for a petition for post-conviction relief may be delayed until the petitioner discovers the facts giving rise to the claim. *Charboneau v. State,* 144 Idaho 900, 904-05, 174 P.3d 870, 874-75 (2007).

Idaho Code § 19-2407 and ICR 34 are not ambiguous and do not require that a motion to extend the time for filing a motion for a new trial be made within two years of the judgment. But, even if the statute and rule are found ambiguous, the rule of lenity requires that they be read narrowly and be construed in favor of the defendant. *State v. Jones,* 151 Idaho 943, 947, 265 P.3d 1155, 1159 (Ct. App. 2011). Applying the rule of lenity to I.C. § 19-2407 and ICR 34, this Court should overrule *Parrott* and *Davis* (insofar as one can argue that *Davis* supports *Parrott*), to hold that the district court may extend the time for filing a motion for a new trial even after the

initial period for filing a new trial motion has expired. This Court should then reverse the order denying the new trial motion in this case and remand to allow Mr. Smith to file a motion to extend the time for the filing of his new trial motion.

V. CONCLUSION

For the reasons set forth above, Mr. Smith asks this Court to reverse the order denying the new trial motion and remand with instructions for further proceedings to allow Mr. Smith to file a motion to extend the time limit for the filing of his new trial motion.

Respectfully submitted this 19th of September, 2012.

Deborah Whipple
Attorney for Dana Smith

CERTIFICATE OF SERVICE

I CERTIFY that on September 19, 2012, I caused two true and correct copies of the foregoing document to be:

__✓__ mailed

___ hand delivered

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